

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION

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December 6, 2002

Troy Brady
Surface Transportation Board
Case Control Unit
Washington, D.C. 20423



Re: Abandonment of the Enola Branch
Lancaster County, Pennsylvania
Docket No. AB-167 (Sub-No. 1095X)

Dear Mr. Brady,

On October 24, 2002, the Surface Transportation Board ("STB") published a notice in the Federal Register requesting comments on the review conducted under Section 106 of the National Historic Preservation Act for the abandonment of the Enola Branch, which extends across Lancaster County, Pennsylvania. The Pennsylvania Department of Transportation ("Department") is identified as a potential consulting party for the Section 106 review process. This correspondence represents the Department's comments on the October 24, 2002 notice.

- **Consulting parties:** Unless other groups or organizations request consulting party status in response to this notice, the list of potential consulting parties contained in Footnote 4 of the October 24, 2002 notice appears to be adequate. The Department is requesting consulting party status under the Section 106 review process. Any future contact with consulting parties for the abandonment of the Enola Branch should be addressed to Ira Beckerman at P.O. Box 3790, Harrisburg, PA 17105-3790. Mr. Beckerman's phone number is 717-772-0830 and his fax number is 717-772-0834.
- **Assessment of eligibility and adverse effects:** As long as none of the bridges on the Enola Branch are individually eligible, nothing further is recommended regarding the assessment of eligibility on the line. However, if any of the bridges are individually eligible, the effects of the proposed project on each of the individually eligible bridges should be considered and any adverse effects on individually eligible bridges should be considered for avoidance, minimization, or mitigation. The overall project effect is not expected to be other than adverse regardless of whether individually eligible bridges are included, however, avoidance, minimization, and mitigation actions might vary accordingly.

- **Mitigation measures:** Mitigation measures should include the recordation of a sampling of bridges associated with the line. Not every contributing and individually eligible bridge associated with the line would need to be recorded. Rather than recording every contributing and individually eligible bridge associated with the line, the money should be used for outreach and preservation efforts, such as publishing a more comprehensive history of the line in conjunction with the video and providing money to municipalities to take over the maintenance of as many of the historic bridges as possible.
- **Publicizing the Memorandum of Agreement (“MOA”):** The October 24, 2002 notice contained in the Federal Register states that “SEA [STB’s Section of Environmental Analysis] will incorporate the proposed mitigation into an MOA and then circulate, and – as required under law – seek public comment on the MOA.” See 67 Fed. Reg. 65408. Technically, the Section 106 regulations do not require public comment on the MOA. The MOA only needs to be circulated to the consulting parties for comment. See 36 C.F.R. §800.6 (a). Public comment is only required if the STB is attempting to terminate the consultation process under Section 106 without a fully executed MOA. See 36 C.F.R. §800.7(c)(4)(iii).

However, public input is critical in the prior step of resolving adverse effects. The “resolution of adverse effects” is the third step of the Section 106 process, and in this case, would require the STB to consult with the State Historic Preservation Officer (“SHPO”), Advisory Counsel on Historic Places (“ACHP”), and consulting parties “to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.” See 36 C.F.R. §800.6(a). During the “resolution of adverse effects”, the STB is required to “make information available to the public, including the documentation specified in §800.11(e). . . .” See 36 C.F.R. §800.6(a)(4). The STB should “provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking.” See 36 C.F.R. §800.6(a)(4).¹

Since your discussion of publicizing the MOA is accompanied by a footnote explaining that multiple steps of the Section 106 process can be taken simultaneously where appropriate, the STB may be attempting to satisfy these requirements by publicizing the MOA. However, merely publicizing the MOA will not be enough to satisfy Section 800.6(a)(4).

¹ Another section of the 106 process requires the STB to “provide the public with information about an undertaking and its effects on historic properties and seek public comment and input.” 36 C.F.R. §800.2(d)(3).

The documentation set forth in Section 800.11(e) must be made available to the public, and should include:

1. A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary.
2. A description of the steps taken to identify historic properties;
3. A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;
4. A description of the undertaking's effects on historic properties;
5. An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and
6. Copies or summaries of any views provided by consulting parties and the public.

See 36 C.F.R. §800.11(e).

The Department uses its public involvement procedures developed to address the requirements contained in National Environmental Policy Act (25 Pa. Bull. 6041) to satisfy the Section 106 public input requirements. The Department recommends that the STB consider publishing a notice of availability of the documentation, which satisfies Section 800.11(e), as a block ad in a local newspaper of general circulation in the project area for a public comment period. The documentation could be made available for review by the public in local township offices or local libraries.² This procedure should satisfy the Court's requirement that SEA "consider the comments and opinions of the Keeper, the ACHP, and other interested parties as to the scope of eligible historic properties and as to a proper mitigation plan", provided a copy of the documentation is provided to the Keeper, ACHP, and the other identified consulting parties (identified in Footnote 4 of the October 24, 2002 notice) for their comments. See *Atglen-Susquehanna Trail v. Surface Transp. Bd.*, 252 F.3d 246, 267 (3d Cir. 2001); 36 C.F.R. §800.6(a)(3).

² Please keep in mind that the STB "should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of §800.2(d) are met." See 36 C.F.R. §800.6(a)(4). Other public involvement methods could include a web site, presentations at local townships and borough meetings, and presentations at local historical societies.

- **Other pertinent issues:** Hearings were held before the Pennsylvania Public Utility Commission in June 1997, at which time sworn testimony was offered detailing safety concerns at various highway/railroad crossings. The Public Utility Commission issued an Order addressing the existing safety issues which has since been stayed pending the outcome of this process. The Department requests that the parties move expeditiously through this process so that existing public safety concerns can be addressed.

If you encounter any questions regarding the Department's comments, please contact Ira Beckerman, Cultural Resources Section Chief, at 717-772-0830.

Sincerely,



for Dean Schreiber, P.E.
Director
Bureau of Design

Cc: Barry Hoffman, P.E., District Engineer, District 8-0
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